

# Congress of the United States

Washington, DC 20515

November 22, 2022

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Charles Schumer  
Majority Leader  
U.S. Senate  
Washington, D.C. 20510

Dear Speaker Pelosi and Majority Leader Schumer:

We write today to ask you to include H.R. 7647 and S. 4188—the Supreme Court Ethics, Recusal, and Transparency (SCERT) Act—in must-pass legislation before the end of the 117th Congress, such as the Fiscal Year 2023 appropriations omnibus.

The nation’s highest court is experiencing a crisis of legitimacy. In September 2022, a Gallup poll found that only seven percent of Americans had a “great deal of trust” in the Supreme Court.<sup>1</sup> This marks the lowest level of trust Gallup has recorded since it first began asking this question in the 1970s.<sup>2</sup> Other polling data from NBC News and the Pew Research Center further confirm what is already clear: the public’s confidence in the Court’s ability to do its job has reached a historic low.<sup>3</sup>

Where millions of Americans once saw an impartial institution worthy of their respect, they now see an overtly partisan body, composed of far-right justices who are unwilling to separate the rule of law from their own personal and political whims.

The behavior of Justice Clarence Thomas over the last year is but one example of why the American people have lost confidence in the Supreme Court. Justice Thomas’s wife, Republican activist Virginia “Ginni” Thomas, attended the rally prior to the January 6, 2021, insurrection at the U.S. Capitol and was a direct and active participant in President Trump’s plan to illegally overturn the results of the 2020 presidential election.<sup>4</sup> She also joined a letter to Congressman Kevin McCarthy urging the House Republican Conference to “act immediately to

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<sup>1</sup> Jeffrey M. Jones, *Supreme Court Trust, Job Approval at Historical Lows*, Gallup (Sept. 29, 2022), <https://news.gallup.com/poll/402044/supreme-court-trust-job-approval-historical-lows.aspx>.

<sup>2</sup> Kathryn Haglin et al., *Americans don’t trust the Supreme Court. That’s dangerous.*, Wash. Post (Oct. 10, 2022), <https://www.washingtonpost.com/politics/2022/10/10/supreme-court-public-opinion-legitimacy-crisis/>.

<sup>3</sup> Chuck Todd et al., *Public’s opinion of Supreme Court plummets after abortion decision*, NBC News (Aug. 26, 2022), <https://www.nbcnews.com/meet-the-press/first-read/publics-opinion-supreme-court-plummets-abortion-decision-rcna44962>; *Positive Views of Supreme Court Decline Sharply Following Abortion Ruling*, Pew Rsch. Ctr. (Sept. 1, 2022), <https://www.pewresearch.org/politics/2022/09/01/positive-views-of-supreme-court-decline-sharply-following-abortion-ruling/>.

<sup>4</sup> Danny Hakim and Jo Becker, *Ginni Thomas Says She Attended Jan. 6 Rally*, N.Y. Times (Mar. 14, 2022), <https://www.nytimes.com/2022/03/14/us/politics/ginni-thomas-jan-6-rally.html>; Luke Broadwater et al., *Ginni Thomas Pressed Trump’s Chief of Staff to Overturn 2020 Vote, Texts Show*, N.Y. Times (Mar. 24, 2022),

remove both Rep. Liz Cheney (R-Wyo.) and Rep. Adam Kinzinger (R-Ill.) from the Republican Conference due to their egregious actions as part of the House of Representative's [sic] January 6th Select Committee."<sup>5</sup>

Yet, despite the clear and present conflict of interest posed by his spouse's involvement, Justice Thomas has defied both federal law and canons of judicial ethics by refusing to recuse himself from a number of high-profile cases involving January 6th, the January 6th Select Committee, and President Trump's election challenges.<sup>6</sup> Most notably, Justice Thomas was the lone dissenting justice in the Supreme Court's denial of an emergency application to block the release of documents to the January 6th Select Committee that may have included text messages between his wife and former White House Chief of Staff Mark Meadows in which they discussed overturning the 2020 presidential election results.<sup>7</sup> Last week, Justice Thomas again dissented from a similar decision regarding the January 6th Select Committee's access to communications from the chair of the Arizona Republican Party.<sup>8</sup> Arizona is one of at least two states in which Justice Thomas's wife urged Republican legislators to overturn the 2020 election results.<sup>9</sup>

Justice Thomas's egregious misconduct is far from the only ethical issue facing the justices. Last week, a report from the New York Times revealed additional details about the religious group Faith and Action's decades-long, private, well-funded lobbying campaign to influence Supreme Court justices known as "Operation Higher Court."<sup>10</sup> In this well-researched article, the former leader of that campaign credibly alleges that a pair of Faith and Action's wealthy donors were able to learn the outcome and authorship of the Court's 2014 opinion in

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<https://www.nytimes.com/2022/03/24/us/politics/ginni-thomas-trump-mark-meadows.html>; Jo Becker and Danny Hakim, *Ginni Thomas Urged Arizona Lawmakers to Overturn Election*, N.Y. Times (May 20, 2022),

<https://www.nytimes.com/2022/05/20/us/politics/ginni-thomas-election-trump.html>; Scott Bauer, *Ginni Thomas emails show she urged Wisconsin lawmakers to overturn 2020 election*, PBS (Sept. 1, 2022), <https://www.pbs.org/newshour/politics/ginni-thomas-emails-show-she-urged-wisconsin-lawmakers-to-overturn-2020-election>.

<sup>5</sup> *Conservative Leaders: Remove Cheney And Kinzinger From House Republican Conference*, Conservative Action Project (Dec. 15, 2021), <https://conservativeactionproject.com/conservative-leaders-remove-cheney-and-kinzinger-from-house-republican-conference/>; see also Michael Kranish, *Critics say Ginni Thomas's activism is a Supreme Court conflict. Under court rules, only her husband can decide if that's true.*, Wash. Post (Jan. 31, 2022), <https://www.washingtonpost.com/politics/2022/01/31/ginni-thomas-clarence-thomas-conflict-jan6-committee/>.

<sup>6</sup> See Adam Liptak, *In Rebuke to Trump, Supreme Court Allows Release of Jan. 6 Files*, N.Y. Times (Jan. 19, 2022), <https://www.nytimes.com/2022/01/19/us/politics/trump-supreme-court-jan-6.html>. Additionally, in October 2022, Justice Thomas placed a temporary hold on a lower court order requesting that Trump associate, Senator Lindsey Graham, testify before an Atlanta-area grand jury investigating the efforts to overturn the 2020 Presidential Election in Georgia. See Ariane de Vogue and Tierney Sneed, *Clarence Thomas freezes order for Lindsey Graham to testify before Georgia grand jury investigating 2020 election*, CNN (Oct. 24, 2022), <https://www.cnn.com/2022/10/24/politics/supreme-court-lindsey-graham-clarence-thomas>. Despite Justice Thomas's initial stay, the Court ultimately upheld the lower court's order earlier this month. See Nina Totenberg, *Supreme Court says Lindsey Graham must testify in grand jury Georgia election probe*, NPR (Nov. 1, 2022), <https://www.npr.org/2022/11/01/1131776586/supreme-court-lindsey-graham-grand-jury-georgia>.

<sup>7</sup> Adam Liptak, *Justice Thomas Ruled on Election Cases. Should His Wife's Texts Have Stopped Him?*, N.Y. Times (Mar. 25, 2022), <https://www.nytimes.com/2022/03/25/us/supreme-court-clarence-thomas-recusal.html>.

<sup>8</sup> Amy Howe, *Court allows Jan. 6 committee to obtain phone records of Arizona GOP chair*, SCOTUSblog (Nov. 14, 2022), <https://www.scotusblog.com/2022/11/court-allows-jan-6-committee-to-obtain-phone-records-of-arizona-gop-chair/>.

<sup>9</sup> See Emma Brown, *Ginni Thomas pressed Wisconsin lawmakers to overturn Biden's 2020 victory*, Wash. Post (Sept. 1, 2022), <https://www.washingtonpost.com/investigations/2022/09/01/ginni-thomas-wisconsin-bernier-tauchen/>.

<sup>10</sup> Jodi Kantor and Joe Becker, *Former Anti-Abortion Leader Alleges Another Supreme Court Breach*, N.Y. Times (Nov. 19, 2022), <https://www.nytimes.com/2022/11/19/us/supreme-court-leak-abortion-roe-wade.html>.

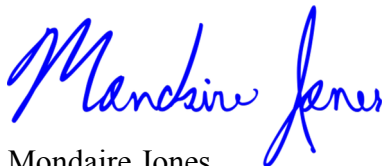
*Burwell v. Hobby Lobby* during a private dinner with Justice Samuel Alito several weeks before the *Hobby Lobby* ruling was handed down.<sup>11</sup>

This latest report surrounding Justice Alito further underscores how, for years, justices have ignored serious questions about gifts and travel provided to them as part of special interest influence campaigns,<sup>12</sup> along with questions surrounding the armadas of dark-money amici curiae signaling to the justices how they should rule. And although the justices claim to voluntarily consult the code of conduct that applies to lower court judges, as it stands, the Supreme Court is the only court in the country without a binding code of ethics.<sup>13</sup> It is no wonder trust in the Supreme Court is at an all-time low given the startling lack of accountability and transparency measures in place for Supreme Court Justices when deciding cases.

This is precisely what the SCERT Act would remedy. This crucial legislation would help restore the public's faith in the Supreme Court by: forcing all justices to follow a uniform code of ethics; applying stricter transparency standards to gifts and travel; requiring the Court to disclose lobbying and dark-money interests before it; and codifying clear, enforceable standards for recusal. Through adding an enforceability mechanism to the existing recusal statute—specifically, by allowing other Supreme Court Justices to review recusal motions, rather than allowing each individual justice to be the final arbiter of their own recusal decisions—the SCERT Act would prevent future violations like what we have seen from Justice Thomas. Lastly, the bill would impose an additional “duty to notify” parties when a justice's personal or financial interests may reasonably require recusal.

The Justices of the United States Supreme Court are not above the law. Yet, year after year, this is the message that the justices send by flouting basic legal and ethical obligations. Congress enables this conduct by failing to enact clear, enforceable ethics standards for the nation's highest court. In the coming weeks, the 117th Congress will have a final chance to change this narrative and begin restoring legitimacy to a once-hallowed institution. We must do so by adding the text of the SCERT Act to Congress's upcoming Fiscal Year 2023 appropriations omnibus or other must-pass legislation.

Sincerely,



Mondaire Jones  
Member of Congress



Henry C. "Hank" Johnson, Jr.  
Member of Congress

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<sup>11</sup> *Id.*

<sup>12</sup> Peter S. Canellos and Josh Gerstein, 'Operation Higher Court': Inside the religious right's efforts to wine and dine Supreme Court justices, Politico (July 8, 2022), <https://www.politico.com/news/2022/07/08/religious-right-supreme-court-00044739>.

<sup>13</sup> *The effort to implement a Supreme Court code of ethics*, NPR (Apr. 17, 2022), <https://www.npr.org/2022/04/17/1093265007/the-effort-to-implement-a-supreme-court-code-of-ethics>.



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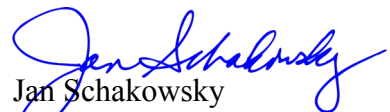
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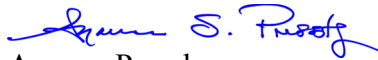
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